

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

OCTOBER 15, 2002

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, October 15, 2002 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Acting Chairman MARTIN SMITH.

Present: Commissioners MARTIN SMITH, BARBARA HEATH, PAULINE IKAWA, NANCY LeRoy, Executive Director BETH EMMONS, and Investigator ANN FLANAGAN.

- I. Motion by Commissioner LeRoy, seconded by Commissioner HEATH, to approve and accept the minutes of the Commission meeting held on September 17, 2002.

II. APPOINTMENTS

9:00 a.m. - Equivalency Interviews

| <u>CANDIDATE</u> | <u>COMMISSIONER</u> | <u>DETERMINATION</u> |
|------------------|---------------------|----------------------|
| RONALD MURRO | LeRoy | APPROVED |

9:15 a.m. – BARTLETT PAULDING appeared before the Commission to explain a “yes” answer to question #7 on his salesperson’s application. After explanation, review and discussion, and on motion by Commissioner Ikawa, seconded by Commissioner Heath, the Commission unanimously approved the issuance of a salesperson’s license to Mr. Paulding.

9:30 a.m. – BRIAN ROYCE appeared before the Commission to explain a “yes” answer to question #7 on his salesperson’s application. After explanation, review and discussion, and on motion by Commissioner LeRoy, seconded by Commissioner Heath, the Commission unanimously approved the issuance of a salesperson’s license to Mr. Royce, upon the receipt of a letter from his principal broker stating that the broker is aware of Mr. Royce’s past legal incident.

MARIE PACETTA of the Pace Group appeared before the Commission to discuss a previous submission to the Commission of a consultant contract. After review and discussion, the Commission decided to forward the consultant contract to the Attorney General’s Office for an opinion as to whether the agreement and the consultant activity involving real estate would require a real estate license under RSA 331-A.

III. DISCUSSION

ANN FLANAGAN, the Commission’s Investigator submitted a request to withdraw Complaint File No. 2002-03-01 NEW HAMPSHIRE REAL ESTATE COMMISSION VS WILLIAM A. OATES (DBA: OATES & BEDFELDT). After review and discussion, and on motion by Commissioner LeRoy,

seconded by Commissioner Ikawa, the Commission unanimously approved the withdrawal of the Complaint. Mr. Oates to be so notified.

JAMES MACKISSOCK submitted a request for the Commission to consider whether timeshare reservation clerks need to be licensed or be unlicensed assistants under the supervision of a licensed broker. After review and discussion the Commission requested the Commission's Investigator to request from Mr. Mackissock, the specific duties of the timeshare reservation clerks.

OTHER BUSINESS

1. Tuesday, November 19, 2002, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2002-06-01**

Evaluator: Commissioner HEATH

Determination: No violation, should not be heard.

(b) **FILE NO. 04-03-01**

Evaluator: Commissioner SLATTERY

Determination: should be heard, hearing to be scheduled. In the alternative, the Commission unanimously approved to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$250.00.

The above determinations were unanimously approved.

3. ORDERS

The following Orders were issued by the New Hampshire Real Estate Commission. Copies of the Orders are attached and become part of the official minutes of this meeting.

- (1) FILE NO. 2001-09-02 R. SCOTT LITTLEFIELD & JANET A. TUCKER VS GERALD AUDET
- (2) FILE NO. 2001-08-01 JUDITH O. THAYER VS MARSHA ROGERS, ROBERT PHILLIPS, ROSE MARIE PHILLIPS, ROBERT SCARPONI & LINDA WHEELER
- (3) FILE NO. 2001-10-06 NEW HAMPSHIRE REAL ESTATE COMMISSION VS SUSAN P. ROEMER & SHILA N. DUFF (BUYERS CHOICE REALTY)

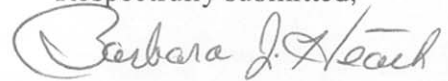
(4) FILE NO. 2002-09-03 NEW HAMPSHIRE REAL ESTATE COMMISSION VS LANE D.
RAICHE

4. The Commission issued an Answer to a Request for Findings of Facts and Rulings of Law for FILE
NO. 2001-06-03 BRADLEY STEUSLOFF VS STEPHEN WEEKS.

VIII. ADJOURNMENT

Motion by Commissioner IKAWA, seconded by Commissioner LeRoy to adjourn the
meeting. Acting Chairman SMITH adjourned the meeting at 10:35 p.m.

Respectfully submitted,

A handwritten signature in cursive script, reading "Barbara J. Heath".

BARBARA J. HEATH

Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2001-08-01

JUDITH THAYER

VS

MARSHA ROGERS, ROBERT PHILLIPS, ROSE MARIE PHILLIPS,
ROBERT SCARPONI, AND LINDA WHEELER
(NORWOOD REAL ESTATE)

This matter comes before the Real Estate Commission on the complaint of Judith Thayer, who alleges violations of NH RSA 331-A:25-b and d, NH RSA 331-A:26 IV, V, XXIX, XXXI, XXXVI and New Hampshire Code of Administrative Rules Rea 404.04 by Marsha Rogers, Robert S. Phillips, Rose Marie Phillips, Robert D. Scarponi, and Linda Wheeler. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Robert S. Phillips was licensed as a real estate salesperson on 09/18/75, and as a real estate broker on 03/15/79, and was the principal broker for Norwood Real Estate at the time of the alleged violations.
2. Robert D. Scarponi was licensed as real estate salesperson on 10/14/93 and as a real estate broker on 10/14/94, and was the office managing broker for Norwood Real Estate at the time of the alleged violations.
3. Rose Marie Phillips was licensed as real estate salesperson on 10/12/76 and as a real estate broker on 09/23/80, and was associated with Norwood Real Estate at the time of the alleged violations.
4. Marsha N. Rogers was licensed as real estate salesperson on 02/04/86 and as a real estate broker on 01/11/94, and was associated with Norwood Real Estate at the time of the alleged violations.
5. Linda P. Wheeler was licensed as real estate salesperson on 09/23/82 and as a real estate broker on 02/01/84, and was associated with Norwood Real Estate at the time of the alleged violations.
6. Marsha Rogers listed a single family property located at 1943 Elm Street, Manchester, New Hampshire, owned by Judith Thayer (hereinafter referred to as Complainant) and Stephen Thayer, on 11/18/98 for a price of \$286,000 based on Norwood Real Estate market analysis, Complainant's Exhibit #4.

7. Linda Wheeler testified (transcript, pg. 162) that she had been showing her buyer-clients Glenn and Margaret Rogers (hereinafter referred to as the buyers) properties but had not shown them Complainant's property because it was priced higher than the maximum \$225,000 buyers had indicated in their buyer-agency agreement with Norwood Real Estate. The Buyers had seen the Norwood Real Estate for sale sign on the property because it was a couple of houses down the street from the Norwood office, and they told their agent Linda Wheeler that they wanted to see it.

8. Linda Wheeler testified (transcript, pgs. 164-165) that prior to showing them Complainant's property, she disclosed to the buyers that she would be acting as a dual agent.

9. Linda Wheeler testified (transcript, pg. 178) that she showed Complainant's property to the buyers twice, and that Complainant was present at the second showing and they had conversations with Complainant concerning issues with the property such as the possibility of another bathroom and electrical problems.

10. Linda Wheeler testified (transcript, pgs. 167-168) that she did not disclose to Complainant that she was acting as a dual agent at the second showing because the law did not require it until a purchase and sales agreement was presented. Linda Wheeler was not able to cite the law she was referring to, but felt that it was in effect at the time.

11. Linda Wheeler testified (transcript, pgs. 175-176) that as a dual agent she could not tell the sellers what the buyers were willing to pay or tell the buyers what the sellers were willing to come down to, or coach either regarding price or whether to accept an offer.

12. On 08/6/99, the buyers made an offer to purchase Complainant's property for \$250,000 through their buyer-agent, Linda Wheeler.

13. Marsha Rogers, the listing agent, testified (transcript, pg. 105) that she had provided agency disclosure to Complainant at the time when the property was listed. The Disclosure of Agency Relationships in Real Estate Brokerage form was signed by Complainant, her husband Stephen Thayer, and Marsha Rogers on 11/17/98, and it indicated that Norwood Real Estate was a "Seller's Agent".

14. Complainant testified (transcript, pg. 26) that she was never presented with any subsequent Disclosure of Agency Relationships in Real Estate Brokerage form with the "Disclosed Dual Agent" box checked.

15. Marsha Rogers testified (transcript, pgs. 107 and 110) that she described the concept of dual agency to Complainant at the time of the listing.

16. Marsha Rogers testified (transcript, pg. 108) that she had no idea Linda Wheeler was showing buyer-clients Complainant's property until Linda Wheeler indicated to her that they were putting together an offer.

17. Marsha Rogers testified (transcript, pg. 112) that Linda Wheeler at the time of showing was acting as a disclosed dual agent.

18. Marsha Rogers testified (transcript, pg. 128) that Norwood Real Estate did not have a dual agency relationship with the buyers until the sellers signed and endorsed a purchase and sales agreement for the property.

19. Marsha Rogers testified (transcript, pg. 129) that disclosed dual agency kicked in when the offer was presented.

20. Marsha Rogers testified (transcript, pg. 115) that by not checking "no" in the box on the listing agreement to indicate that she did not want Norwood Real Estate to act as dual agents, Complainant was allowing them to act as dual agents.

21. Marsha Rogers testified (transcript, pg. 152) that when she presented the offer for Complainant's signature on 08/13/99, that Norwood's role as a dual agent was indicated on the purchase and sales agreement, and that Complainant signed a dual agency consent agreement at that time as well.

22. Marsha Rogers testified (transcript, pg. 131) that Linda Wheeler had communicated to her that the buyers' offer price was non-negotiable, but that she had no knowledge of the buyers' maximum price stipulated in their buyer-agency agreement with Norwood Real Estate.

23. Complainant testified (transcript, pg. 75) that she and her husband were in a difficult divorce situation, and that she wanted to get the best possible price for their property, but Stephen Thayer wanted it to sell as quickly as possible because of his bank loan fraud problems.

24. Marsha Rogers testified (transcript, pgs. 129-130) that Stephen Thayer requested that she put in writing her opinion about whether this was a good offer and whether there might be a better offer in the foreseeable future, and Marsha Rogers advised them in her affidavit for Stephen Thayer and his attorney, to accept the offer since it might well be the best offer they would see in the foreseeable future (see affidavit).

25. Complainant testified (transcript, pg. 82) that she was very upset that her agents would reduce the price of her property from \$286,000 to \$250,000 without rendering another market analysis, so Complainant had an appraisal done which estimated its value at \$275,000, which she felt did not justify the price reduction (Complainant's Exhibit #3).

26. Complainant testified (transcript, pgs. 32 and 86) that she felt that the agents at Norwood Real Estate were working with Stephen Thayer in opposition to Complainant's best interests as her fiduciaries.

27. Marsha Rogers testified (transcript, pg. 141) that after Complainant became upset with her about the affidavit, the office manager, Robert Scarponi became the communicator with Complainant for Norwood Real Estate.

28. Robert Scarponi testified (transcript, pg. 195) that Complainant sent him a fax indicating that she wanted to fire Norwood Real Estate and withdraw the listing, and that he had advised Stephen Thayer of Complainant's desire to withdraw the listing.

29. Robert Scarponi testified (transcript, pg. 196) that Stephen Thayer sent him a memo guaranteeing that as a judge of the court that he had it all worked out with the court and that Norwood Real Estate should continue to market the property at his instructions.

30. Complainant testified (transcript, pg. 45 and 99) that Marsha Roger's "affidavit" regarding the price of the buyers' offer legally forced her to agree to a price lower than what Complainant felt the property was worth, or she would have to go back to court with no attorney who was willing to take her case.

31. Complainant's attorney-in-fact, Theodore Kamasinski, indicated (transcript, pg. 10-12) that there were actions taken by the agents of Norwood Real Estate which were for the benefit of the buyers, such as the \$15,000 further price reduction for repairs, and Marsha Roger's "affidavit" advising price reductions to get closer to the buyers' price preference.

32. Complainant testified (transcript, pg. 53-54) that even though she held a New Hampshire real estate license for twenty years, she did not actively use her license, but when she went to a required continuing education course subsequent to this transaction, and what she learned about dual agency prompted her to file this complaint.

33. Robert Scarponi testified (transcript, pg. 193) that dual agency means you are representing two people whose interests may not be the same and potentially can be different, and that in this transaction they were serving the interests of both their clients in a fair and balanced way from beginning to end.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

The primary issue in this case is whether the agents from Norwood Real Estate were "acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom the license acts, and without first making full disclosure of all the facts to all parties interested in the transaction" (RSA 331-A:26, XII). Any hypothetical dual agency consent that a seller or buyer may agree to at the time of the listing or buyer-agency agreement does not constitute informed consent, and is no substitute for the dual agency disclosure and consent required when dual agency actually occurs. There seems to be some confusion about what constitutes "acting". Complainant

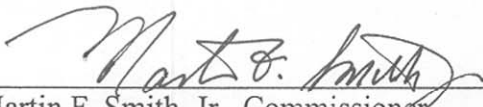
contends that Respondents were "acting" as dual agents when they showed her property to the buyers because they represented her in the listing of her property, and at the same time represented the buyers in a buyer-agency agreement to potentially purchase her property. Complainant felt that Linda Wheeler had opportunity to disclose this to her when Complainant was present and had conversations with her at the second showing at the property. Linda Wheeler testified that she did disclose to the buyers that she would be acting as a dual agent prior to showing them Complainant's property, but testified that she did not disclose to Complainant that she was acting as a dual agent at the second showing because the law did not require it until a purchase and sales agreement was presented. Linda Wheeler was not able to cite the law she was referring to, but felt that it was in effect at the time. The subsequent change to the administrative rule Rea 701.01(c) clarified the timing of dual agency disclosure, but prior to the clarification, the Real Estate Commission would have expected licensees to follow the requirements of Rea 701.01(a) and (b), since they would be "acting" in the capacity of both seller's agents and buyer's agency in a dual agency situation. Initial contact means as soon as they can contact the seller when actual dual agency occurs, not to be confused with the hypothetical dual agency which is explained at the time of the listing. Undisclosed dual agency has never been permissible, and statute always takes precedent over administrative rule. Respondents were not charged with violating Rea 701.01 in this complaint. The only disclosure regulations that were ever in effect that must be made prior to or during the preparation of an offer were conditions of the property disclosures such as private water, private sewer, and insulation, and disclosing a change of agency relationship from non-agency to agency, neither of which apply to this situation. Marsha Roger's testimony added more confusion: transcript pg. 112 she indicated that Linda Wheeler at the time of showing was acting as a disclosed dual agent; transcript pg. 128 she indicated that Norwood Real Estate did not have a dual agency relationship with the buyers until the sellers signed and endorsed a purchase and sales agreement for the property; and transcript pg. 129 she indicated that disclosed dual agency kicked in when the offer was presented. There seems to be four different opinions of when an agent is "acting" as a dual agent. The Real Estate Commission feels that since this transaction occurred at a time when dual agency was even more confusing to agents than it is now, that Respondents did the best that they could at the time.

Complainant also alleged that Respondents colluded with Stephen Thayer to favor the interest of one seller client over another, especially when Marsha Rogers signed the "affidavit" advising them to accept the offer when as a dual agent she should not have been involved in coaching either party regarding matters such as price; and that Respondents breached their fiduciary duty to Complainant and favored the interests of the buyers over hers.

The Real Estate Commission voted to dismiss the complaint in accordance with Rea 206.01(d).

Commissioner Pauling Ikawa evaluated this case and did not take part in the hearing or decision. Commission Chairperson Arthur Slattery had recused himself from the proceedings and did not take part in the hearing or decision.

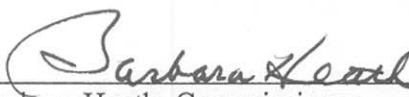
ORDER
FILE NO. 2001-08-01
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Martin F. Smith, Jr., Commissioner

10/15/02

DATE



Barbara Heath, Commissioner

10-15-02

DATE



Nancy LeRoy, Commissioner

10/15/02

DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION
V.
SUSAN P. ROEMER & SHILA N. DUFFY
(BUYERS CHOICE REALTY)

FILE NO. 2001-10-06

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violations of NH RSA 331-A:22-a, II, and III, NH RSA 331-A:25-a, NH RSA 331-A:25-c, I, a, NH RSA 331-A:26, II, X, XXII and XXIX, NH RSA 331-A:34 and the New Hampshire Code of Administrative Rules, Rea 404.04, Rea 701.01 and Rea 703.01 by Susan Roemer; and violations of NH RSA 331-A:17, II, NH RSA 331-A:22-a, II, NH RSA 331-A:25-a, NH RSA 331-A:25-c, I, a, NH RSA 331-A:26, II, IX, X, XVI, XXVII, XXIX, XXXIV and XXXV, NH RSA 331-A:34 and the New Hampshire Code of Administrative Rules, Rea 305.02, Rea 404.04, Rea 701.01 and Rea 703.01 by Shila Duffy. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Susan Roemer was licensed as a New Hampshire real estate salesperson on 09/28/00, and was so licensed at the time of the alleged violations.
2. Shila Duffy was licensed as a New Hampshire real estate broker on 09/21/00, and was the principal broker for Susan Roemer's New Hampshire salesperson license at the time of the alleged violations.
3. On 07/28/01, Susan P. Roemer entered into a Purchase & Sales Agreement with herself and Howard Roemer as buyers and Stephen Denis and Joy Denis as sellers for a property located at 29 Birchdale Road, Bow, New Hampshire, which was listed for sale by Cynthia Gunn, a licensed New Hampshire real estate broker.
4. Susan Roemer typed up the P&S on a Buyers Choice Realty form and listed Buyers Choice Realty as the agency representing the buyers on the P&S. Susan Roemer used Buyers Choice Realty letterhead for numerous items of correspondence throughout the transaction.
5. Susan Roemer is a salesperson licensed in New Hampshire and Massachusetts, and Shila Duffy was her broker of record in both states at the time of the alleged violations. A photocopy of Susan Roemer's New Hampshire real estate license was hanging in a frame on the wall of Buyers Choice Realty in Andover, Massachusetts. Shila Duffy indicated to New Hampshire Real Estate Commission Investigator Ann Flanagan that Susan Roemer's actual New Hampshire license had been sent back to the New Hampshire Real Estate Commission for amendment because she had changed her resident address a couple of weeks earlier, so Shila Duffy had made a photocopy for the wall until the amended license came back in the mail.

6. Buyers Choice Realty is licensed in Massachusetts with Shila Duffy as its Andover, Massachusetts managing broker, but Buyers Choice Realty was not registered with the New Hampshire Secretary of State or the New Hampshire Real Estate Commission at the time of the alleged violations.

7. Buyers Choice Realty registered with the New Hampshire Association of Realtors even though it was not licensed in New Hampshire.

8. On 10/12/01, when New Hampshire Real Estate Commission Investigator Ann Flanagan met with Shila Duffy at Buyers Choice Realty in Andover, Massachusetts, the file for the 29 Birchdale Road, Bow, New Hampshire transaction was not at the office or in the possession of the broker Shila Duffy as required. Shila Duffy indicated that Susan Roemer had the entire file at her home in Bow, New Hampshire. The Investigator inquired of Shila Duffy if the office kept a copy of all its Agency Disclosure Forms and Exclusive Buyers Agency Agreements, and she answered that Susan Roemer had the entire file, but Susan Roemer had previously told her that she had neglected to do an Agency Disclosure Form, and that she did not know for sure whether Susan Roemer had an Exclusive Buyers Agency Agreement, but she doubted that she would have one if she did not also have the Agency Disclosure Form.

9. After returning from Buyers Choice Realty in Andover, Massachusetts, the Investigator went to Susan Roemer's home in Bow, New Hampshire with Cynthia Patten, Executive Secretary for the Commission. Commission Investigator Ann Flanagan requested of Susan Roemer to see the file for the 29 Birchdale Road, Bow, New Hampshire transaction. After reviewing the file on the front steps of Susan Roemer's residence, the Investigator asked Susan Roemer why there was no Agency Disclosure Form or Exclusive Buyer Agency Agreement in the file. Susan Roemer answered, "I'm not going to lie to you - I just didn't do them."

10. Buyers Choice Realty is now registered with the New Hampshire Secretary of State and licensed with the New Hampshire Real Estate Commission.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondents conducted brokerage activity for a property located in the state of New Hampshire without registering their firm name, without a brokerage contract, without disclosures, and they were unable to produce documentation at Buyers Choice Realty for inspection on demand by the Commission Investigator. Brokers from Buyers Choice Realty would have been permitted to do brokerage activity in New Hampshire under their Massachusetts license by entering into a Cooperating Agreement, but Susan Roemer is a salesperson rather than a broker, and no such Cooperating Agreement was entered into by anyone from Buyers Choice Realty. Susan Roemer and Buyers Choice Realty were representing the buyers through the New Hampshire real estate licenses of Susan Roemer and Shila Duffy; however, Buyers Choice Realty was not licensed in New


Hampshire. Therefore, the Commission rules that Respondents did violate the above
aforementioned statutes and administrative rules.

In view of the foregoing rulings of law, the Real Estate Commission hereby
Orders that in the future, Susan Roemer and Shila Duffy will obey the statutes and rules
of the New Hampshire Real Estate Commission, and that any future similar violations
could result in severe disciplinary action against Respondents' New Hampshire real
estate licenses. The Commission is currently satisfied that Respondents' compliance with
firm name licensing requirements is indicative that Respondents will exercise more care
in the future towards compliance in the areas of the other violations as well.


Commissioner Arthur H. Slattery evaluated the case and did not take part in this
hearing or decision.


Martin F. Smith, Jr., Commissioner

10/15/02
DATE


Barbara Heath, Commissioner

10-15-02
DATE


Pauline Ikawa, Commissioner

10/15/02
DATE


Nancy LeRoy, Commissioner

10/15/02
DATE

STATE OF NEW HAMPSHIRE

REAL ESTATE COMMISSION

FILE NO. 2001-09-02

R. SCOTT LITTLEFIELD & JANET A. TUCKER
V.
GERALD N. AUDET

This matter comes before the Real Estate Commission on the complaint of R. Scott Littlefield and Janet A. Tucker, who allege violations of NH RSA 331-A:25b, NH RSA 331-A:26 V, XXIX, XXXI, XXVIII and New Hampshire Code of Administrative Rules Rea 404.04 by Gerald Audet. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Gerald Audet (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 6/11/86 and as a real estate broker on 6/5/92, and was so licensed and the principal broker of Jerry Audet Real Estate, located at 376 Central Street, Franklin, New Hampshire, at the time of the alleged violations.
2. On 6/11/99, R. Scott Littlefield and Janet A. Tucker (hereinafter referred to as Complainants) entered into a six month listing agreement with Respondent to sell their single family property with 13 acres located at 1146 New Hampton Road, Sanbornton, New Hampshire (Complainants' Exhibit #1).
3. Respondent testified that he hand wrote over the typed dates and changed the dates on the contract without complainants' written acknowledgement. He testified (pg. 57 transcript) that he changed the listing date from 6/11/99 to 12/11/99, and changed the expiration from 12/11/99 to 12/11/20.
4. Respondent testified that he did not intend to change the listing agreement to indicate a 21 year listing, but that he intended to list the property from 6/11/98 to 6/11/99, and that if Complainants had a problem with that they could get a withdrawal from him (pg. 58 transcript).
5. Complainant Tucker testified that Complainants were behind on their mortgage payments, and that they were considering subdividing 7 acres to sell separately in order to get caught up with their lender; and then sell the house with the remaining 6 acres separately. In order to list the property as such, it was subject to bank review and approval, based on market value opinion from Respondent.
6. During this time, Complainants had assumed that their original listing of the house with 13 acres was no longer being marketed because the listing had expired and

Respondent was involved with them regarding the subdivision and aware of the foreclosure situation with their lender. However, subsequently Complainants became aware that the original listing was still on the MLS.

7. Respondent had Complainants sign a withdrawal of the original listing. Complainants signed it but did not know why they should have to withdraw a listing that had expired. Even after signing a withdraw, the original listing was subsequently still on the MLS.

8. Respondent submitted his opinion of value to Complainant's lender on listing forms by leaving blank the contract dates and his commission amount for the purpose that Complainants could get bank approval to list the subdivided properties.

9. Complainants' lender approved the marketing of the subdivided properties, and Respondent used the same forms he had used for bank approval as listings by filling in the blank contract dates and his commission amount without the written acknowledgement of Complainants.

10. Respondent entered the new property listing on the MLS, but it was posted with the old MLS number, which could only happen if the original listing had not been withdrawn. The MLS took the new listing as an update rather than a new listing.

11. Complainant Tucker testified that Respondent indicated that the house was for sale with 6.3 acres when it was actually 6 acres, and Respondent entered the land for sale for \$39,900 when they had listed it for \$40,000 with their lender's permission.

12. Respondent indicated that he had offered to reduce his commission to Complainants if they provided their own buyer, but he did not put this variable commission in the listing contract even though it was posted as such in the MLS.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

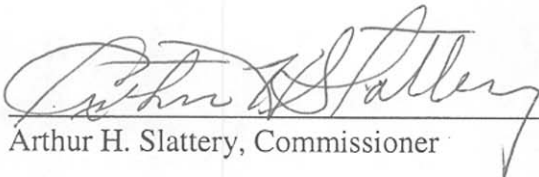
Contracts and dates are very important in real estate brokerage activities. Respondent admitted that he changed dates and filled in blank terms of his listing agreements without Complainants' written acknowledgement. Some of Respondent's alterations of the dates made them so illegible that it was difficult to see what the original dates were or what his changes were. Respondent never removed the expired original listing from the MLS as evidenced by the fact that the new subdivided listing bore the old original MLS number. The outdated listing could have potentially harmed his clients' interests in the marketing of their new listings which were subdivisions of the original listing. Therefore, the Commission rules that respondent did violate NH RSA 331-A:25b, NH RSA 331-A:26 XXIX, XXXI, XXVIII and New Hampshire Code of Administrative Rules Rea 404.04.

Even though Respondent's actions were sloppy, lazy, and unprofessional, the Commission does not believe that Respondent was doing anything to intentionally cause harm to Complainants. Therefore, the Commission rules that Respondent did not violate NH RSA 331-A:26, V.

In view of the foregoing rulings of law, the Real Estate Commission hereby Orders Respondent to pay a disciplinary fine in the amount of \$250 to the state of New Hampshire General Fund within three (3) months of the date of this Order, and to attend a New Hampshire Real Estate Commission approved course on contracts, in addition to and not to count for his continuing education requirements.

Under the provisions of RSA 331-A28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

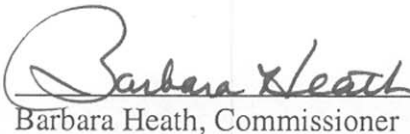
Commissioner Pauline A. Ikawa evaluated the case and did not take part in this hearing or decision.


Arthur H. Slattery, Commissioner

10/15/02
DATE


Martin E. Smith, Jr., Commissioner

10/15/02
DATE


Barbara Heath, Commissioner

10-15-02
DATE


Nancy LeRoy, Commissioner

10/15/02
DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION
V.
LANE D. RAICHE

FILE NO. 2002-09-03

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violations of NH RSA 331-A:13, I; RSA 331-A:26, I, IV, V, VII, VIII, XXVI, XXXI, XXXVI; and New Hampshire Code of Administrative Rules Rea 404.04, 701.01, and 702.01 by Lane D. Raiche. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Lane D. Raiche was licensed as a real estate broker on 25 July 02, and was so licensed as a principal broker at the time of the alleged violations.

2. Lane Raiche failed to appear at the New Hampshire Real Estate Commission hearing scheduled for 17 September 2002 at 1:00 p.m. The hearings were running late, and the above captioned hearing actually occurred at 2:15 p.m. instead of 1:00 p.m. Lane Raiche contacted the Commission office by telephone at approximately 12:45 p.m. and notified the Commission that he would be unable to be present at the hearing because he needed to pick up his daughter at the airport at 4:45 p.m. Mr. Raiche was informed that the hearing would take place with or without his presence.

3. Lane Raiche, on his sworn notarized New Hampshire Real Estate Commission application for license as a real estate broker, answered "No" to question #8: Have you ever been convicted of an offense other than a traffic violation? Manchester District Court Records 99-CR-07474, show that Lane D. Raiche was convicted of Class A Misdemeanor Stalking and received a suspended sentence, probation, counseling, and good behavior requirement.

4. Lane Raiche, on his sworn notarized New Hampshire Real Estate Commission application for license as a real estate broker, answered question #3: In what states, if any, including New Hampshire, have you ever been or are you now registered or licensed to sell real estate? Give dates, "Florida, 1985-2002". Printouts from the Florida Real Estate Commission indicate Lane D. Raiche was licensed from 1980 until 1997.

5. On 24 August 02, Michael and Gisele Fournier gave a \$3,500 deposit check to Lane Raiche to purchase 54-56 Bleucher St., Manchester, New Hampshire, for \$160,000, and executed a Purchase & Sales Agreement with Lane Raiche as the seller and seller's agent. The Fourniers indicate that Lane Raiche told them the property was a foreclosure and that is why it was so inexpensive. According to the owners of 54-56 Bleucher St., the Griffins, their property is not listed for sale and they never heard of Lane Raiche. Mr. and Mrs. Griffin reported this to the Manchester Police Department, and were told by the police that Lane Raiche had taken another \$1,000 deposit for their Bleucher St. property from an elderly woman, but the police made Lane Raiche return the money to the woman. The Fournier \$3,500 check was cashed by Lane Raiche rather than being deposited in an escrow account. The Fourniers have made a claim against Lane Raiche's brokers bond.

6. On 14 August 02, John Kolb gave Lane Raiche a check for \$1,000 as a deposit to purchase a property at Addison Road in Goffstown, New Hampshire that Lane Raiche told him he was marketing. Respondent did not have a listing agreement to market the property. Lane Raiche has since returned John Kolb's deposit.

7. Attorney Andrew Sullivan contacted the New Hampshire Real Estate Commission regarding his client Henry Champagne's \$7,000 deposit to Lane Raiche to purchase a property located at 453 Dubuque Street, Manchester, New Hampshire, and requesting bond information.

8. Henry Champagne testified at the hearing that he gave Lane Raiche a \$7,000 deposit to purchase the property located at 453 Dubuque Street, Manchester, New Hampshire for \$325,000. Mr. Champagne entered into evidence a copy of a check in the amount of \$3,000 payable to Henry Champagne, issued by Lane Raiche. Mr. Raiche issued the check as a partial refund of the deposit money due to Mr. Champagne. Mr. Champagne testified that he was unable to cash the check, due to no funds available.

9. Andre Boucher testified at the hearing that he gave Lane Raiche a \$5,000 deposit to purchase the same property located at 453 Dubuque Street, Manchester, New Hampshire for \$320,000.

10. Russell Slater is the owner of 453 Dubuque Street, Manchester, New Hampshire. Mr. Slater reported his concerns to the New Hampshire Real Estate Commission because people were trying to buy his property and it was not for sale.

11. There were no agency disclosure forms presented in any transactions.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Lane D. Raiche made false statements on his sworn notarized New Hampshire Real Estate Commission application for license as a real estate broker. Therefore, the Commission rules that Lane D. Raiche did violate NH RSA 331-A:26, I.

Lane D. Raiche misrepresented properties to prospective buyers by indicating that the properties were under foreclosure and that he had the authority to market the properties. Therefore, the Commission rules that Lane D. Raiche did violate NH RSA 331-A:26, IV, V, XXVI, XXXI, and New Hampshire Code of Administrative Rules Rea 404.04.

Escrow checks were cashed by Lane Raiche rather than being deposited in an escrow account. Therefore, the Commission rules that Lane D. Raiche did violate NH RSA 331-A:13, I; RSA 331-A:26, VII, VIII, and Rea 702.01.

There were no agency disclosure forms presented by Lane Raiche in any transactions. Therefore, the Commission rules that Lane D. Raiche did violate New Hampshire Code of Administrative Rules Rea 701.01.

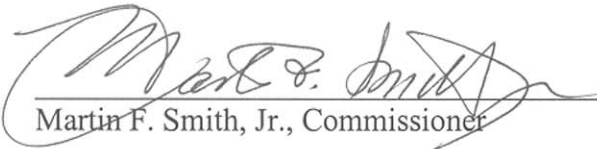
Lane D. Raiche was issued a principal broker's license by the New Hampshire Real Estate Commission albeit he took a 40 hour pre-licensing course and passed the broker's exam after equivalency 12 years ago. It is obvious to the Commission that Mr. Raiche's lack of knowledge and experience has contributed to his failure as a principal broker. However, the evidence and circumstances surrounding the transactions has caused the Commission to believe that Lane Raiche has intentionally committed misrepresentations, fraud, and conversion of trust money to himself. Therefore the Commission rules that Lane D. Raiche did violate NH RSA 331-A:26, XXXVI.

In view of the foregoing rulings of law, the Real Estate Commission hereby Orders that Lane D. Raiche pay a disciplinary fine to the State of New Hampshire General Fund immediately in the amount of \$2,000 per offense for a total of \$24,000. The Commission further Orders the permanent revocation of Lane D. Raiche's real estate license. Lane D. Raiche shall surrender his real estate broker wall license and pocket ID card to the Commission immediately.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.


Arthur H. Slattery, Chairperson

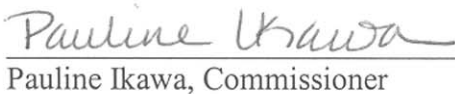
9-19-02
DATE


Martin F. Smith, Jr., Commissioner

9/20/02
DATE


Barbara Heath, Commissioner

9/20/02
DATE


Pauline Ikawa, Commissioner

9/24/02
DATE


Nancy LeRoy, Commissioner

9-19-02
DATE